
Office of Inspector General Audit Report

*Diversion of Airport Revenue
Dade County Aviation Department*

*Federal Aviation Administration
Southern Region*

*Report Number: R4-FA-7-035
Date Issue: June 25, 1997*





U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Memorandum

Subject: ACTION: Report on Diversion of Airport Revenue,
Dade County Aviation Department, FAA Southern
Region, Report No. R4-FA-7-035

Date: June 25, 1997

From: Lawrence H. Weintrob *LH Weintrob*
for Assistant Inspector General for Auditing

Reply to
Attn of: JA-1

To: Acting Federal Aviation Administrator

I am providing this report for your information and use. Your March 31, 1997, comments to our December 19, 1996, draft report were considered in preparing this report. A synopsis of the report follows this memorandum.

In your comments, you concurred with all recommendations except 1b, with which you partially concurred. You provided supplemental documentation, provided by the airport sponsor, and we agree with your proposed actions. With the exception of Recommendations 1b and 2b, the recommendations in this report are considered resolved. In order to resolve Recommendations 1b and 2b we request that, within 60 days, the Federal Aviation Administration provide target dates for completion of proposed corrective actions. All recommendations are subject to the followup provisions of the Department of Transportation Order 8000.1C.

I appreciate the courtesies and cooperation extended to our audit staff during the audit. Please call me at (202) 366-1992, or Mr. Dale R. Mills, Regional Manager, at (404) 562-3770, if you have questions or need additional information concerning this report.

Attachment

Diversion of Airport Revenue Dade County Aviation Department

Federal Aviation Administration Southern Region

Report No. R4-FA-7-035

June 25, 1997

Objective

On February 13, 1996, the Federal Aviation Administration (FAA) Orlando Airports District Office requested the Office of Inspector General to make an audit of airport revenue at the Dade County Aviation Department. Our audit objective was to determine whether Dade County's airport-generated revenues were used only for operating and capital costs of its airports, in compliance with 49 United States Code, Section 47107 (the Airport and Airway Improvement Act of 1982, as amended).

Conclusions

During Fiscal Years (FY) 1992 to 1995, Dade County generated total operating revenue of \$1.4 billion. We concluded that Dade County had reasonable management controls over the airport fund. However, we also found that airport-generated revenue was used for prohibited purposes such as (1) to pay for nonairport-related roadway, fire, and police impact fees; (2) to fund nonairport-related public relations activities of Dade County such as \$50,000 to sponsor the Film Society of Miami, Inc.'s annual film festival; and (3) to pay for building permit fees for inspection services that were either not properly documented or were duplicative.

Monetary Impact

We identified prohibited use of airport-generated revenues totaling \$4.3 million during the period October 1989 through May 1996. This amount reflects a reduction of \$887,823 from the amount cited in our draft report. We made the reduction based on supplemental information provided in your comments to our draft report. We also considered building permit fees of \$4 million charged to the airport fund as unsupported cost because documentation was not available to establish whether inspection services were provided or necessary.

Recommendations

We made recommendations to improve management controls, restrict the use of airport-generated revenues, recover prohibited expenditures for nonairport-related expenses charged to the airport fund, and establish the eligibility of unsupported costs of building permits.

Management Position

FAA concurred or partially concurred with all recommendations. Subsequent to the draft report, based on discussions with airport sponsor management, and additional documentation provided by the sponsor, FAA reevaluated the public relations expenditures of \$1.5 million questioned in our report. FAA concluded that \$887,823 was consistent with FAA policy, \$350,630 was ineligible promotional cost and should be repaid to the airport fund, and \$214,849 would be subjected to further analysis.

Office of Inspector General Comments

We commend FAA on its prompt actions taken to date. The corrective actions taken and planned by FAA satisfy the intent of all recommendations. FAA's supplemental discussions with Dade County management and the additional documentation provided to FAA evidenced a link to the promotion of airport facilities and services, and other aviation related interests. Therefore, we accept FAA's proposed corrective actions to allow \$887,823 of the \$1.5 million questioned, disallow and require repayment of \$350,630, and withhold a decision on the remaining balance of \$214,849 until supplemental explanations and documentation are received from the sponsor.

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I. INTRODUCTION

Background

The Federal Aviation Administration (FAA) promotes developing a system of airports to meet the Nation's aviation needs by providing Federal assistance through grants-in-aid. FAA grants include funds for airport development, planning, and noise compatibility programs. As a condition precedent to approval of an FAA grant, 49 United States Code (U.S.C.), Section 47107 (formerly the Airport and Airway Improvement Act of 1982 (AAIA), as amended) requires the sponsor to agree to comply with specific assurances. Section 47107 requires airport-generated revenues be used for airport operating and capital costs. Failure to comply with grant provisions can result in funds being withheld.

As a condition precedent to receiving an airport-development grant under the AAIA, the sponsor must provide written assurance that it will comply with provisions contained in 49 U.S.C., Section 47107. Title 49 U.S.C., Section 47107 states:

. . . revenues generated by a public airport will be expended for the capital or operating costs of (A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

To further enforce the AAIA provisions concerning generation and use of airport revenues, Congress added a general provision to the 1994 Department of Transportation (DOT) and Related Agencies Appropriations Act (Public Law 103-122, dated October 27, 1993). Title III, General Provisions, Section 328 of the 1994 Appropriations Act, states: "None of the funds provided by this Act shall be made available to any State, municipality or subdivision thereof that diverts revenue generated by a public airport in violation of the provisions of the Airport and Airway Improvement Act of 1982, as amended." The same provision was included in Section 325 of the 1995 DOT Appropriations Act.

The FAA Authorization Act of 1994 (Public Law 103-305, dated August 23, 1994) added new policies for the enforcement against prohibited diversion of airport revenue. Section 112(a)(2) prohibits the diversion of airport revenue through:

- (A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;
- (B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;
- (C) payments in lieu of taxes or other assessments that exceed the value of services provided; or
- (D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

To implement the provisions of the various Federal aviation laws and regulations, FAA issued orders providing written guidance, policies, and procedures for grantees to use in complying with the laws and regulations, and for FAA personnel to ensure that grantees comply. In FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook and FAA Order 5190.6A, Airport Compliance Requirements, the FAA implemented the revenue requirements of AAIA. One of FAA's internal controls to monitor compliance was the inclusion of assurance 25 in the standard assurances that are part of each grant. This assurance requires sponsors to acknowledge each time a grant is received that it is complying with 49 U.S.C., Section 47107.

Dade County is an airport sponsor and a FAA grant recipient. For Dade County, the Dade County Aviation Department (DCAD) operates Miami International, Opa Locka, Tamiami, Homestead, Opa-Locka West, and the Training and Transition airports. During Fiscal Years (FY) 1992 to 1995, DCAD generated total operating revenue of \$1.4 billion. For FYs 1992 to 1996, DCAD received \$68.4 million in FAA grants including \$22.4 million in discretionary grants.

Objective, Scope, and Methodology

On February 13, 1996, the Manager, FAA Orlando Airports District Office (ADO), requested the Office of Inspector General (OIG) perform an airport revenue accountability audit of Dade County. We were requested to focus on three specific areas, (1) roadway impact fees charged to the DCAD by Dade County for airport development projects, (2) airport promotional expenses, and (3) building permit fees charged to DCAD by Dade County for airport development projects. Accordingly, the objective of our audit was to determine whether Dade County's airport-generated revenues were used only for operating and capital costs of the airports, in compliance with 49 U.S.C., Section 47107.

We performed audit verification work at the FAA ADO in Orlando, Florida, and DCAD and other Dade County offices in Miami, Florida. The audit covered the period October 1, 1991 through June 30, 1996. This timeframe covered the period since our last airport revenue audit at DCAD. Where necessary to include all impact fees, our audit was expanded to include prior periods.

We evaluated airport fund management controls for construction and promotional expenditures to determine if Dade County complied with the revenue-use grant assurances. We tested selected construction and promotional accounts and transactions. We analyzed expenditure accounts for payment of nonairport-related expenditures. We reviewed selected transactions from these accounts for verification to supporting documentation to test for aviation-related use. We also reviewed Dade County's procedures for issuing building permits and inspecting airport construction projects. We interviewed FAA, Dade County, and DCAD officials concerning the use of airport revenue for impact fees, promotional activities, and building permits. We also interviewed personnel of the public accounting firm that performed the annual audit of the sponsor's airport fund required by the Single Audit Act of 1984.

The audit was performed in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States and included such tests of procedures, records, and other data as were considered necessary in the circumstances. Our audit work was performed during the period March through September 1996.

Management Controls

We included tests of the sponsor's management controls, policies, and procedures specifically related to the audit objective. Control weaknesses identified during the audit are discussed in Part II of this report.

Prior Audit Coverage

OIG audit report, Airport Revenue Accountability for Dade County, Florida, Report No. R4-FA-3-034, dated October 26, 1992, disclosed that Dade County (1) used airport-generated revenue to fund nonairport-related promotional functions, (2) transferred airport-generated revenue to Dade County's general fund, and (3) used airport-generated revenue to reimburse Dade County's general fund for indirect costs that were not supported by an

approved cost allocation plan. In the 1992 report, we questioned \$2.7 million of nonairport-related expenses charged to the airport fund. We also concluded that \$27.7 million of indirect costs charged to the airport fund by Dade County was unsupported because the plan had not been independently audited and verified for reasonableness.

In response to our 1992 report, FAA agreed that Dade County should reimburse airport revenue diverted for promotional activities. During subsequent negotiations with Dade County officials, FAA reduced the recommended reimbursement of \$1.1 million to \$397,289. FAA concurred with the recommendation to seek reimbursement from Dade County for \$1.6 million from a nonairport equity transfer. Rather than reimbursing the airport fund for diverted revenues, Dade County demonstrated it expended revenues gained from nonairport sources on transportation projects that benefited the airport. These funds were considered in offsetting the diverted revenues and the recommendation was closed. An independent audit was performed of the DCAD's cost allocation plan. The \$27.7 million of unsupported costs were accepted as eligible airport fund expenditures.

The Dade County airport fund was audited annually as required by the Single Audit Act of 1984. For our audit period, these reports did not disclose any findings or internal control weaknesses related to the use of airport revenue.

II. FINDING AND RECOMMENDATIONS

Finding. Need to Restrict the Use of Airport-Generated Revenue to Airport-Related Purposes

DCAD used airport-generated revenue for prohibited purposes. Airport-generated revenue was used to (1) pay nonairport-related roadway, fire, and police impact fees; (2) fund nonairport-related public relations activities of Dade County; and (3) pay building permit fees for inspection services that were either not properly documented or were duplicative. Prohibited use of airport-generated revenue occurred because Dade County management disregarded assurances it provided FAA related to revenue use. We identified prohibited use of airport-generated revenues totaling \$4.3 million during the period October 1989 through May 1996. We also considered \$4 million of building permit fees charged to the airport fund to be unsupported cost because DCAD was unable to document whether inspection services were provided or necessary.

Discussion

FAA airport sponsors must use airport-generated revenue in accordance with Federal law, FAA regulations, and grant assurances provided as consideration for receiving FAA grants. As a recipient of FAA grant funds, the sponsor must meet the revenue requirements of 49 U.S.C., Section 47107. Title 49 U.S.C., Section 47107 and assurance 25 of each grant agreement require airport sponsors to restrict the use of airport-generated revenue to the capital and operating costs of their airport system.

In a May 14, 1993, legal opinion concerning use of airport revenue to pay Dade County fees, the FAA Chief Counsel concluded the DCAD could not use airport revenue to pay fees associated with potential airport development projects (e.g., police impact, road impact, and concurrency fees). The fees were characterized as "before-the-fact" fees. The FAA Chief Counsel concluded that such fees were speculative and did not constitute "capital or operating costs" within the meaning of Section 511(a)(12) of AAIA.

Results of Audit

Although DCAD had reasonable management controls over the airport fund, we found prohibitions regarding use of airport-generated funds were disregarded. Prohibited expenditures included roadway, fire and police impact fees; nonairport-related public relations expenditures; public works

permits; and concurrency fees. Additionally, we identified unsupported costs related to building permit fees.

Impact Fees - In 1988, Dade County enacted Ordinance No. 88-112 which imposed a roadway impact fee on all development activity within Dade County. The impact fees were designed to ensure all new development would bear its proportionate share of the projected capital cost of road improvements necessary for the additional estimated traffic volume attributed to new development. In addition, in 1990 Dade County enacted Ordinance No. 90-31 and imposed an impact fee for funding police protection for the existing population and to accommodate projected population due to new development. We found DCAD paid impact fees to Dade County with airport-generated revenue from October 1989 to March 1996, totaling \$3,393,017 (see exhibit A).

Although the impact fees comply with local ordinances, they are contrary to grant assurance provisions. As expressed by the FAA Chief Counsel, in an opinion dated May 14, 1993, Dade County may not use airport-generated revenue to pay Dade County impact fees. In the opinion, the Chief Counsel stated:

Such action would violate Federal law and the sponsor assurances that require that all airport revenue be dedicated for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

The FAA considered the Dade County impact fees to be "before-the-fact" fees because the local statutes expressly state the fees must be paid before building permits are issued for any proposed construction. In FAA's opinion, such costs were speculative until the proposed development had been completed and actual costs were known.

In a November 17, 1995, memorandum to the FAA ADO Manager, the Dade County Manager agreed to immediately refund impact fees held in escrow for police and fire services and refund the roadway impact fees upon completion of the Development of Regional Impact Review (DRI) process that was underway at Miami International Airport. On March 25, 1996, while the audit team was onsite, DCAD received a check for \$2,542,299 from Dade County with the stipulation that the roadway impact fee portion be put into a restricted escrow account until the DRI process was complete. Accordingly,

the escrowed funds cannot be used for normal airport operating expenses. During our August 21, 1996 meeting, FAA officials agreed that Dade County should refund the remaining \$850,718 and rescind the escrow account requirement for the \$2,542,299 so these funds may be used for airport fund capital and operating expenses.

Nonairport Use of Airport Revenue to Promote Dade County - We found DCAD charged the airport fund \$1.5 million (see exhibit B) for nonairport-related events or promotions for the benefit of Dade County. We found the following examples of airport-generated funds used for nonairport-related purposes:

- For FYs 1992 to 1995, DCAD sponsored the "Miami Nice Project" for a total of \$187,500. This program was designed to provide hospitality training to drivers for hire. The project was administered by the Dade County Consumer Services Department and was conducted at Barry University in Miami, Florida.
- DCAD sponsored the Film Society of Miami, Inc.'s Annual Film Festival in FYs 1992 and 1993 for a total of \$50,000. We questioned this same type of expenditure in the prior OIG audit, Report No. R4-FA-3-034. FAA previously agreed this was a prohibited use.
- DCAD donated \$25,000 to the Greater Miami Host Committee for the 1991 Big Orange New Year's Eve Celebration.
- DCAD sponsored the Super Bowl Game Day and Blow-Out Day Hospitality activities in January 1995 for a total of \$8,351.
- DCAD donated \$6,000 to the City of Opa Locka for its Arabian Nights Festival during FYs 1994 and 1995. This is a street festival and celebrates the local cultural heritage of the city.
- DCAD sponsored the Dade Amateur Golf Association "Doral Junior Classic" golf tournament on January 12, 1994, for \$1,000.

In addition to the above examples, DCAD also used airport-generated revenue to make contributions to trade shows, scholarship banquets, and charities.

Dade County's "corrective action" in response to the 1992 OIG audit of DCAD did not result in restricting the use of airport-generated revenue. In

response to findings in OIG audit Report No. R4-FA-3-034, dated October 26, 1992, the Dade County Board of County Commissioners adopted Resolution No. R-179-91. This resolution established procedures for processing requests from community groups for aviation and/or seaport department promotional funds. Subsequently, Dade County issued Administrative Order 7-32 which prescribed procedures for approving funds requests. In defining eligible funding requests, Dade County Administrative Order 7-32 stated that events and functions which were not directly and specifically related to its airports would be eligible; including sporting events that support tourism. Administrative Order 7-32 states:

It is therefore the policy of the County to use budgeted funds to sponsor or participate in worthwhile community events. . . . A 'worthwhile community event or function' is one that is positive and community-minded in nature, and one in which the County's participation is deemed likely to serve to promote and publicize the advantages and attributes of the County's Airport and Seaport facilities and to engender good will towards these facilities. This would include events and functions which are not directly and specifically related to the airports or to the Seaport or the travel industry, such as festivals, sports events, non-aviation or seaport conventions, and functions generally promoting tourism. [underline added]

Sponsor management failed to ensure its administrative order complied with 49 U.S.C., Section 47107 and grant assurance 25. This section states that airport sponsors are to restrict all airport-generated revenue to the capital and operating cost of their airport system. In addition, the FAA Authorization Act of 1994 specifically prohibits the use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems. These expenditures of airport-generated funds for nonairport-related purposes violate 49 U.S.C. Section 47107 and grant assurance 25. Dade County should repay the airport fund for the \$1.5 million used for nonairport purposes.

Building Permit Fees - Dade County requires building permits on all commercial new construction or renovation whether it is for a public or private entity, including Dade County-owned operations. As requested by FAA, we reviewed building permit fees charged to the airport fund. For the period of October 1, 1991 to March 31, 1996, we found \$3,975,571 of building permit fees paid for with airport-generated revenue.

On October 20, 1994, the FAA concluded Dade County building permit fees for airside projects were in violation of the AAIA. Airside projects generally consist of the construction of paving and underground utility infrastructure, such as drainage, water supply, sanitary sewer, electrical/communications ductwork, airfield lighting, and fuel piping systems to service terminal or other facilities. The FAA asserted building permit fees for airside projects were not appropriate considering little or no service was being provided to DCAD to support the fees being charged. However, the FAA allowed building permits for landside development, (such as terminals and parking facilities) provided DCAD receives reasonable value for services rendered. FAA management stated value for services included staff-hours expended as documented in proposal permit reviews and project inspections.

DCAD tried unsuccessfully to waive the requirement for airside building permits. In a March 6, 1996, memorandum to the Dade County Department of Planning, Development, and Regulation, the DCAD Assistant Aviation Director for Facilities Development asked for concurrence that a building and zoning permit was unnecessary for airfield installations.

In a May 15, 1996, memorandum, FAA reiterated its permit fees decision to DCAD by stating, "In order for such costs to be appropriate it would have to be demonstrated that the related permitting services were not duplicating other work efforts and in fact were adding value to the project(s) commensurate to the fees." The FAA concluded, "Therefore, the FAA has determined that the permitting fees are inappropriate as the related services add little or no value to the project(s)."

Even though the FAA determined that airside building permit fees were inappropriate, and fees for landside projects should be well documented and not be duplicative, DCAD paid \$3,975,571 in building permits fees for the period October 1, 1991 through March 31, 1996, for construction at the four main airports as shown below:

<u>Airport</u>	<u>Total Permit Costs</u>	<u>No. of Permits</u>
Miami International	\$3,585,376	1,952
Opa Locka	97,514	100
Homestead General Aviation	133,831	129
Tamiami/Kendall	<u>158,850</u>	<u>294</u>
Totals	<u>\$3,975,571</u>	<u>2,475</u>

To review building permits and associated fees, we selected a sample of 15 construction projects. These 15 projects were assessed the highest cost for permits issued since October 1, 1991. Our sample of construction projects had fees totaling \$2,428,517. This represents 60 percent of the cost of building permit fees assessed to the airports during the same time period. From information obtained at both Dade County and DCAD, we were unable to determine with certainty whether the projects were for airside or landside work. In many cases, a project included both airside and landside work. The following table summarizes the 15 sampled projects and exhibit C provides further details on 8 of the 15 projects, 7 of which appear to be primarily airside.

Project Description	Airport	Total Permit Costs	No. of Permits
Concourse H Apron	Miami Int'l	\$ 111,237	6
Concourse A Apron & Utility I	Miami Int'l	153,159	10
Opa-Locka 12-30 Runway II	Opa-Locka	64,344	10
Concourse A Apron Utilities	Miami Int'l	279,791	2
Tamiami Airfield Signage	Tamiami	112,181	16
Homestead Airfield Signage	Homestead	105,572	12
Midfield Expansion I	Miami Int'l	262,791	6
Terminal Expansion North	Miami Int'l	699,542	4
GTI Parking Garage Mod. A	Miami Int'l	112,168	21
Concourse E Terminal Mod.	Miami Int'l	75,622	11
Cargo Bldg. 2205 & Apron	Miami Int'l	108,959	48
Concourse E FIS Bldg. Carousel 8 II	Miami Int'l	62,476	11
Cargo Bldg. N805 Apron I	Miami Int'l	54,775	1
North Side Noise Walls	Miami Int'l	85,182	10
Air Conditioning & Pump Mods	Miami Int'l	<u>140,718</u>	<u>6</u>
Totals		<u>\$2,428,517</u>	<u>174</u>

The Dade County Department of Planning, Development and Regulation established a suboffice at Miami International Airport to perform plans review and inspection of airport projects. There were three onsite inspectors and six plans processing and review personnel in this suboffice. Dade County ordinances require all entities to submit their building plans for review and approval to determine if they are in compliance with the South Florida Building Code. Occasional inspections were performed by the onsite inspectors. Once the project was complete, a certificate of occupancy was issued.

We found the inspections performed were duplicative in many cases. For airport projects, especially those involving airside work, there were multiple layers of daily onsite review by the architects, project engineers, and the

FAA. The building inspector assigned to the airport told us he just reviewed the logs at the construction site and relied on the daily inspections of the project engineering firm.

The DCAD project managers who oversee the construction contractors were the key point where permit fees could be reviewed for reasonableness. The construction contractors apply for the permits, pay the fees, and submit invoices to DCAD for reimbursement. The project managers approved payment of these invoices, but frequently the invoices were monthly installments of contract amounts for multiple line items and provided limited details as to the breakdown of costs invoiced. The total permit fees by construction project were not tracked by the project managers nor by DCAD. We consider these permit fees to be “unsupported costs” because DCAD does not have a mechanism to review these fees paid by the construction contractors.

The FAA has determined the permitting fees for airside projects were in violation of 49 U.S.C., Section 47107 and grant assurance 25 because the services add little or no value to the projects. We recommend DCAD determine which permits were applicable to airside projects and obtain a refund for that amount. For the landside projects, we recommend DCAD obtain documentation of the services provided and justification as to the reasonableness of the fees. Furthermore, we recommend that DCAD should establish a control system to prevent application for airside building permits and determine the reasonableness of the landside permit fees.

Public Works Permits - The Dade County Public Works Department assesses fees to cover processing permits and inspection services for public works construction and for paving and drainage construction on public rights-of-way and on private property. DCAD paid \$212,770 for public works permits on airport construction projects for the period October 1, 1991 through April 30, 1996 (see exhibit D).

The Public Works Department does not perform onsite inspections of airport projects although it does inspect other projects. For airport projects, the Public Works Department conducted only an initial plans review to determine if the plans adhered to the South Florida Building Code. The airport pays the same fees for public works permits as any other entity; however, the airport does not receive full services. The FAA has determined that permitting fees for public works projects are inappropriate use of airport-generated revenues as the related services add little or no value to the project.

Based on preliminary results from our audit, DCAD requested a refund of \$90,145 from the Dade County Public Works Department. The DCAD Assistant Aviation Director for Facilities Development stated, in his request for refund, that the permits were inadvertently requested and airside apron construction projects should not require public works permits or inspections. A notice was also sent to the DCAD project managers and consultants, who approve payment of construction items, that permit fees are not required on public works projects.

These expenditures of airport-generated funds for fees that add little or no value to the projects violate 49 U.S.C., Section 47107 and grant assurance 25. The FAA should verify that DCAD received the \$90,145 refund and require Dade County to refund the remaining \$122,625 in public works fees for airport construction projects.

Concurrency Fees - The Metro-Dade Service Concurrency Management Program (Chapter 33G of the Code of Metropolitan Dade County) requires certain Dade County departments to review proposed development projects to determine whether established "levels of service" were exceeded. If so, the developer must provide "fees" to Dade County. In order to obtain a "developmental order" (which is required before a building permit can be issued), the applicant is subject to the collection of "fees." The concurrency fee is a 6-percent surcharge on the amount of the original permit or application fee.

The legal opinion issued by FAA Headquarters on May 14, 1993, concerning the use of airport revenue to pay Dade County impact fees, also referred to concurrency fees. The FAA considered concurrency fees to be "before-the-fact" fees because the statutes expressly state the fees must be paid before building permits were issued for any proposed construction. The Chief Counsel concluded DCAD could not use airport revenue to pay the fees at this time.

DCAD paid concurrency fees of \$101,302 for the period October 1, 1991 through March 31, 1996. These expenditures of airport-generated funds for "before-the-fact" fees violate 49 U.S.C., Section 47107 and grant assurance 25. DCAD should obtain a refund of the \$101,302 in concurrency fees for airport construction projects.

* * * * *

FAA has formally issued, for comments, its proposed policies on diversion of airport revenue. In February 1996, FAA released for comment its Diversion of Airport Revenue Policy (Federal Register docket No. 28472). Subsequently, in December 1996, FAA released a supplemental notice proposing additions to the February 1996 proposed policies. Prohibited uses of airport revenue were given as follows:

1. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport, that are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
2. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;
3. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
4. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates;
5. Loans of airport funds to a state or local agency at less than the prevailing rate of interest;
6. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant;
7. Impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities;
8. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property, unless the

expenditure is directly related to the operation or marketing of the airport;

9. Direct subsidy of air carrier operations; and
10. Indirect payment for the general costs of government (but not including billing for specific services provided to the airport).

FAA issued the above proposed policies to fulfill the statutory provisions of Section 112 of the FAA Authorization Act of 1994, which required FAA to establish policies and procedures on the generation and use of airport revenue. The policies outlined in the proposals reflect the standards the FAA has traditionally applied in determining whether airport revenue use is consistent with Federal requirements. As of the date of this report, FAA has not issued the final policy statement regarding revenue generation and use.

Recommendations

1. We recommend FAA initiate procedural steps necessary to reach a final determination regarding noncompliance with grant assurances and withhold payments on current grants and approval of future grants, if Dade County does not:
 - a. Reimburse DCAD's airport fund \$850,718 for impact fees paid in violation of 49 U.S.C., Section 47107 and rescind the escrow account requirement for the remaining \$2,542,299.
 - b. Reimburse the DCAD's airport fund for nonairport-related promotional expenditures of \$1,453,302.
 - c. Restrict the use of airport-generated revenue to the capital and operating costs of its airport system.
 - d. Review the \$4 million of unsupported building permit fees and reimburse the airport fund for airside building permit fees where the services were either not provided or were duplicative.
 - e. Reimburse the DCAD's airport fund \$212,770 for public works permits that were paid in violation of 49 U.S.C., Section 47107.
 - f. Reimburse the DCAD's airport fund \$101,302 for concurrency fees that were paid in violation of 49 U.S.C., Section 47107.

2. We also recommend FAA require DCAD to establish a control system to:
 - a. Exclude airside building permit fees and determine the reasonableness of the landside building permit fees.
 - b. Prevent the payment of public works permit fees and concurrency fees.

Management Response

In a March 31, 1997, response to our December 19, 1996, draft report, the Acting FAA Administrator expressed overall concurrence with the recommendations. FAA concurred with Recommendations 1a, 1c, 1d, 1e, 1f, 2a, and 2b. FAA partially concurred with Recommendation 1b, indicating that after detailed discussions with sponsor management, FAA (1) concluded that \$887,823 of the \$1.5 million promotional expenditures questioned in our draft report were consistent with FAA current policy, (2) agreed that \$350,630 should be reimbursed by Dade County to the airport fund, and (3) withheld a decision on \$214,849 of promotional expenses pending additional data to be provided to Dade County.

For Recommendation 1a, FAA agreed to notify Dade County to reimburse the DCAD airport fund \$850,718 for impact fees paid in violation of 49 U.S.C., Section 47107 and rescind the escrow account requirement for the remaining \$2,542,299. For Recommendation 1c, FAA agreed to notify Dade County that Administrative Order 7-32 should be modified to reflect only those events which are directly and specifically related to the airports are eligible for payment with promotional funds of the airport.

Regarding Recommendation 1d, FAA agreed to require Dade County to distinguish between those services that were actually performed and were not duplicative on specific projects, and those projects where services were not performed or were duplicative, and to refund the airport fund any fees paid inappropriately. FAA stated this review would include all projects between October 1, 1991 and March 3, 1996. FAA agreed to inform the OIG of the amount to be refunded.

For Recommendation 1e, FAA agreed to require the sponsor to repay the questioned public works permit fees of \$212,770. The response stated that based on preliminary audit findings provided by OIG, FAA had already

requested the sponsor repay \$90,145 of public work permit fees to DCAD and based on our draft report FAA would request the sponsor repay the balance of \$122, 625. In response to Recommendation 1f, FAA agreed to request a refund of \$101,302 from Dade County for concurrency fees paid in violation of 49 U.S.C., Section 47107.

For Recommendation 2a, FAA agreed to notify Dade County to (1) determine which permits were applicable to airside projects and obtain a refund for that amount, (2) furnish documentation of the services provided and justification for the reasonableness of the fees for landside projects, and (3) establish a control system to prevent application for airside building permits and to determine the reasonableness of the landside permit fees in the future.

Regarding Recommendation 2b, FAA indicated it would request Dade County to develop a system that tracks the value received for any future public works permitting fees that may be required and ensure fees are charged only for services actually provided to the airport.

Except for Recommendations 1b and 2b, FAA agreed to take corrective actions within 45 days of the issuance of the final report. The complete text of FAA's response is included as an appendix to this report.

Audit Comments

The corrective actions taken or planned by FAA satisfy the intent of our recommendations and the recommendations are considered resolved, except for Recommendations 1b and 2b. Recommendations 1b and 2b will also be considered resolved once FAA provides dates for completion of corrective actions.

For Recommendation 1b, we defer to FAA's judgment based on its supplemental discussions with Dade County management and the additional documentation provided to FAA. The additional information evidenced a link to the promotion of airport facilities and services, and other aviation related interests. Accordingly, we accept the proposed corrective actions to allow \$887,823 of the \$1.5 million questioned by OIG, disallow and require repayment of \$350,630, and withhold a decision on the remaining balance of \$214,849 until supplemental explanations and documentation are received from the sponsor. For each recommendation, please provide us copies of FAA correspondence and Dade County documentation to support the implementation of the proposed corrective actions.

Exhibit A

Impact Fees
October 4, 1989 to March 31, 1996

Dade County Process No.	Date Collected	Road Impact Fee	Fire Impact Fee	Police Impact Fee	Check Total	Status
C90000576	10/04/89	\$367			\$367	
C89143064	10/12/89	1,149			1,149	
C90060671	03/07/90	4,955			4,955	
C90081867	07/12/90	1,480	\$580		2,060	
C90044106	11/07/90	3,169	390	\$254	3,813	
C91090983	06/07/91	10,884	3,651	1,933	16,468	
C92017075	03/13/92	4,017	425	225	4,667	
C91107662	04/10/92	9,537	2,678	2,553	14,768	
C92052944	05/28/92	1,236	152	99	1,487	
C92098953	07/01/92	96,712	27,152	25,885	149,749	
C92058317	12/03/92	163,958			163,958	
C92058317	12/03/92		22,772	21,709	44,481	
C92114031	12/03/92	139,758			139,758	
C92114031	12/03/92		19,411	18,505	37,916	
C93079171	01/11/93	2,513	310	201	3,024	
C92110379	06/18/93	198,566	21,021	11,133	230,720	
C92127021	10/13/93	295,062	23,710	22,604	341,376	<u>1/</u>
C93234184	01/05/94	445,880	34,158	35,830	515,868	<u>1/</u>
C92127286	01/14/94	242,593	17,695	16,797	277,085	<u>1/</u>
C94090857	07/28/94	14,033	3,940	3,756	21,729	<u>2/</u>
C93300386	08/10/94	489,665	39,348	37,512	566,525	<u>1/</u>
C94047052	08/22/94	60,588	17,010	16,216	93,814	<u>1/</u>
B94105690	08/24/94	1,751	492	469	2,712	<u>2/</u>
C94090861	08/24/94	4,480	1,258	1,199	6,937	<u>2/</u>
C94197147	09/30/94	34,552	3,658	1,937	40,147	<u>1/</u>
C94123103	10/04/94	189,113	15,197	14,488	218,798	<u>1/</u>
C93394814	12/21/94	<u>439,015</u>	<u>26,373</u>	<u>23,298</u>	<u>488,686</u>	<u>1/</u>
Totals		<u>\$2,855,033</u>	<u>\$281,381</u>	<u>\$256,603</u>	<u>\$3,393,017</u>	
Less Refunded Amts.		\$2,196,468	\$177,149	\$168,682	\$2,542,299	
Remaining Totals		<u>\$ 658,565</u>	<u>\$104,232</u>	<u>\$ 87,921</u>	<u>\$ 850,718</u>	

1/ Roadway portion to be held in escrow; police and fire portion refunded.

2/ Dade County agreed to refund; check not received yet.

Figures rounded to nearest whole dollar.

Promotional Expenditures by Category
FYs 1992 - 1996

<i>Expenditure Event Categories</i>	<i>OIG Questioned Amounts</i>	<i>FAA Allowed Amount</i>	<i>FAA Nonallowed Amount</i>	<i>FAA Pending Further Justification</i>
Annual Hemispheric Conferences	\$551,850	\$551,850		
Miami Nice Project-Hospitality Training for Drivers for-Hire	187,500		\$187,500	
Parades and Major Parties	104,117	39,192	34,025	\$30,900
Luncheons and Banquets	96,961	58,378	6,725	31,858
Sponsorship of Conferences	91,481	20,941	51,700	18,840
Paris Air Show	69,445	69,445		
Annual Miami Film Festival	50,000		50,000	
Hialeah Spring Festival	40,000			40,000
World Trade Center Miami Market Analysis and Financial Feasibility Study	40,000	40,000		
Florida Breeders Cup	35,000			35,000
Miami Air Show Refreshments	30,492	30,492		
Promotional Gift Items	22,795			22,795
Dade County Days	20,684	20,684		
Youth Activities	12,544	1,544	1,000	10,000
Manatee Halfway House Rehabilitative Treatment Center	12,500	12,500		
Dade County's Salute to the U.S. Air Force	11,777	11,777		
Entertainment and Equipment for Events	11,046	10,446	600	
Memberships	10,000			10,000
Arabian Nights Festival	6,000		6,000	
Charitable Contributions	5,770		1,000	4,770
Sports Leadership Breakfast Series	5,400	5,400		
Sponsorship of Golf Tournaments	5,272		5,272	
Buses for Nonaviation Events	4,290			4,290
Scholarships	4,200			4,200
Miami Marlboro Grand Prix	3,908		3,908	
5k Roadrace - Aerofest	3,423	3,423		
Greater Miami Chamber of Commerce Events	2,375	1,495		880
Cuban Independence Day Celebration	2,250		2,250	

Promotional Expenditures by Category
FYs 1992 - 1996

<i>Expenditure Event Categories</i>	<i>OIG Questioned Amounts</i>	<i>FAA Allowed Amount</i>	<i>FAA Nonallowed Amount</i>	<i>FAA Pending Further Justification</i>
Florida Huddle	2,020	2,020		
Boritec 1992 Milan Fair	2,000	2,000		
Florida State Fair in Tampa	2,000	2,000		
Association Sponsorship	1,800	1,800		
Travel - Fact Finding Trip to Europe for Hi-Speed Rail	1,266			1,266
Band for Miami Mardi Gras Celebration	900	900		
Miami International Airport Hotel Rooms for Events	826	176	650	
Dade County Public Schools Events	800	800		
Apparel Show	222	222		
South Florida FAM Vendor Fair	188	188		
Printing of Beacon Council Directory	150	150		
Legislative Lobbyist Renewal	<u>50</u>			<u>50</u>
TOTALS:	<u>\$1,453,302</u>	<u>\$887,823</u>	<u>\$350,630</u>	<u>\$214,849</u>

Building Permit Examples

DCAD Construction Project No.: 91077M13	Project Title: Concourse H Apron, Miami International
Estimated Total Project Cost: \$10.7 million (\$3.7 million Federal funds)	
Project Description: The project consisted of approximately 33,200 square yards of pavement and parking capacity for a wide range of aircraft. In addition to the apron paving and apron drainage system, a new pollution control system was being constructed.	
Permit Details: DCAD reimbursed the contractor \$123,237 for nine building permits between June 1994 and April 9, 1996. The master building permit was for \$91,643 and a mechanical permit totaled \$13,965 .	

DCAD Construction Project No.: 92085A31	Project Title: Concourse A Apron & Utility Phase I, Miami International
Estimated Total Project Cost: \$32.8 million (\$3.7 million Federal funds)	
Project Description: The project consisted of approximately 14 acres of rigid and flexible pavement and full utility services including water, sewer, power, communications, drainage, and fueling systems.	
Permit Details: DCAD reimbursed the contractor \$206,677 for 13 building permits between November 1993 and April 16, 1996. The master building permit was for \$134,110 , an electrical permit totaled \$10,670 , and a Department of Environmental Resources Management permit totaled \$28,545 .	

Building Permit Examples

DCAD Construction Project No.: 92097O11	Project Title: Opa-Locka 12-30 Runway II Opa-Locka Airport
Estimated Total Project Cost: \$18.3 million (\$11.7 million Federal funds)	
Project Description: The project includes the reconstruction of runway 12/30 with blast pads on each end, extension of runway 9R/27L, construction and modification of associated taxiways, purchase of navigational aids, airfield marking and signing, runway and taxiway edge lighting, and associated drainage.	
Permit Details: DCAD reimbursed the contractor \$64,344 for 10 building permits between February 1994 and February 27, 1996. The master electrical permit was \$38,084 and another electrical permit totaled \$17,972 . Two building permits were assessed at \$2,360 and \$4,620 .	

DCAD Construction Project No.: 93007A31	Project Title: Concourse A Apron Utilities Miami International
Estimated Total Project Cost: \$23.5 million (no Federal funds)	
Project Description: The project includes the second portion of the Concourse A apron and utility corridor project. This segment includes the apron, utility corridor, and infrastructure required to serve 10 aircraft parking gates.	
Permit Details: DCAD reimbursed the contractor \$279,791 for two building permits starting April 1996. The master building permit was for \$261,274 and the electrical permit totaled \$18,517 . This project construction is just beginning.	

Building Permit Examples

DCAD Construction Project No.: 93009T12	Project Title: Tamiami Airfield Signage Kendall-Tamiami Executive Airport
Estimated Total Project Cost: \$2.8 million (\$2.1 million Federal funds)	
Project Description: <p>The project includes replacement of the airfield lighting system and circuiting, signage and markings, and electrical vault and power distribution system; installation of a computerized control and monitoring system for the power distribution; and airfield lighting and signage systems with remote monitoring capabilities. This project was to repair the damage caused by Hurricane Andrew and update the systems in accordance with revised FAA advisory circulars.</p>	
Permit Details: <p>DCAD reimbursed the contractors \$112,181 for 16 building permits starting May 1994, with the latest being paid May 3, 1995. The master building permit was for \$24,617 and three electrical permits were assessed at \$49,385, \$29,367, and \$6,675.</p>	

DCAD Construction Project No.: 93010X12	Project Title: Homestead Airfield Signage Homestead General Aviation Airport
Estimated Total Project Cost: \$2.2 million (\$1.1 million Federal funds)	
Project Description: <p>The project includes replacement of the airfield lighting system and circuiting, signage and markings, and electrical vault and power distribution system; installation of a computerized control and monitoring system for the power distribution; and airfield lighting and signage systems with remote monitoring capabilities. This project was to repair the damage caused by Hurricane Andrew and update the systems in accordance with revised FAA advisory circulars.</p>	
Permit Details: <p>DCAD reimbursed the contractors \$105,572 for 12 building permits between October 1994 and November 7, 1995. Three electrical permits were assessed at \$15,598, \$84,634, and \$3,375.</p>	

Building Permit Examples

DCAD Construction Project No.: 93033M11B	Project Title: Midfield Expansion I Miami International Airport
Estimated Total Project Cost: \$19.6 million (\$3.5 million Federal funds)	
Project Description: <p>The project will construct two north-south taxiways including paving, drainage, airfield lighting and marking; a new airfield electrical vault building and ductwork to accommodate electrical communications; and FAA transmitter, receiver, and radar cables. The recircuiting of the existing airfield lighting system and installation of a new "push-button" lighting control system at the existing air traffic control tower will also be performed.</p>	
Permit Details: <p>DCAD reimbursed the contractors \$262,791 for six building permits between January 1996 and June 17, 1996. The master building permit totaled \$210,216 and the electrical permit totaled \$51,477.</p>	

DCAD Construction Project No.: 92087M21	Project Title: Terminal Expansion North Miami International Airport
Estimated Total Project Cost: \$73.5 million (\$19 million Federal funds)	
Project Description: <p>The project will provide an additional 305,500 square feet of terminal space. This project will include infrastructure needs, such as support areas; offices; baggage sortation; passenger ticket islands; check-in desks; concession spaces; sterile and domestic corridors with moving walks; ticket islands; airline office areas; space for INS, Customs, and mechanical rooms, as well as life safety corrections at the existing terminal north.</p>	
Permit Details: <p>DCAD reimbursed the contractors \$699,542 for four building permits starting March 1996. The master building permit totaled \$638,986, the electrical permit totaled \$33,738, and the mechanical permit totaled \$23,184.</p>	

Public Works Permits
October 1, 1991 to April 30, 1996

Permit No.	Issue Date	Permit Cost	Project Description
82951	10/01/92	\$ 705	MIA-NW 65th Ave. & 25th St.
85503	06/08/93	50	TAM-Resurfacing & Signal
85926	07/09/93	8,490	MIA-NW 22nd St.; NW 25th St.; NW 67th Ave.
Not available	08/26/93	31,500	MIA-NW 22nd St.; NW 25th St.; NW 67th Ave.
86863	09/17/93	11,060	MIA-NW 67th Ave. & 25th St.
87359	10/27/93	600	MIA-NW 11th St.
87969	12/14/93	23,365	MIA-Concourse A Apron & Utilities
88428	01/28/94	900	MIA-Garage Parking Lanes
88518	02/04/94	20,550	MIA-Roads II
89896	05/19/94	2,760	MIA-Cargo Bldg. 2224 & Apron
90251	06/22/94	8,000	MIA-Concourse H Apron
91272	09/27/94	1,500	MIA-Westside Roads I
91443	10/11/94	1,290	MIA-Water & Sewer Project
91636	10/27/94	2,230	MIA-Roads II
91956	11/29/94	510	OPA-Paving & Drainage
92383	01/11/95	40	TAM-Bldg. 22
92447	01/18/95	1,270	MIA-Northside Noise Walls
92723	02/14/95	120	MIA-Outbound Roadway Signage
93239	03/28/95	1,460	TAM-Bldg. 226A & T-Hangers
93610	04/27/95	1,800	TAM-Bldg. 228 & 229
93757	05/12/95	28,600	MIA-Cargo Bldg. 2222-2226 II Apron
93823	05/19/95	4,205	MIA-Cargo Bldg. 2222
94185	06/26/95	1,305	MIA-Cargo Bldg. N805
94298	07/10/95	20	TAM-Cargo Bldg. 226
94299	07/10/95	1,420	MIA-Cargo Bldg. 2222
94346	07/14/95	12,240	MIA-3401 NW 67th Ave.
94429	07/25/95	3,000	MIA-Perimeter Rd. Improvements
94823	09/11/95	770	MIA-Cargo Bldg. 2205 & Apron
94955	09/25/95	8,945	MIA-Perimeter Rd. Improvements
9600000344	01/26/96	950	MIA-Airport Security Parking Lot
9600000471	02/01/96	380	MIA-Aerotruster Test Cell
9600000560	02/08/96	180	MIA-Vehicle Fuel Line
9600000715	02/16/96	3,040	TAM-Paving
9600001269	03/21/96	17,940	MIA-Concourse A Apron & Utilities
9600001352	03/26/96	2,775	OPA-Miscellaneous Improvements
9600001672	04/09/96	3,400	MIA-Concourse H Apron
9600001886	04/22/96	<u>5,400</u>	MIA-Bldg. 100 Apron

Total \$212,770

Audit Team Members

The following is a listing of the team members who participated in the audit of Diversion of Airport Revenue, Dade County Aviation Department, Miami, Florida.

Dale R. Mills	Regional Manager
Alan D. Robson	Project Manager
Anne V. Longtin	Auditor-in-Charge
Tom A. Pope	Auditor
Kimberly M. Bulman	Auditor
Joyce E. Anderson	Administrative Support